

### **35A-1-101. Title.**

This title is known as the "Utah Workforce Services Code."

Enacted by Chapter 240, 1996 General Session

### **35A-1-102. Definitions.**

Unless otherwise specified, as used in this title:

(1) "Client" means an individual who the department has determined to be eligible for services or benefits under:

- (a) Chapter 3, Employment Support Act; and
- (b) Chapter 5, Training and Workforce Improvement Act.

(2) "Department" means the Department of Workforce Services created in Section 35A-1-103.

(3) "Economic service area" means an economic service area established in accordance with Chapter 2, Economic Service Areas.

(4) "Employment assistance" means services or benefits provided by the department under:

- (a) Chapter 3, Employment Support Act; and
- (b) Chapter 5, Training and Workforce Improvement Act.

(5) "Employment center" is a location in an economic service area where the services provided by an economic service area under Section 35A-2-201 may be accessed by a client.

(6) "Employment counselor" means an individual responsible for developing an employment plan and coordinating the services and benefits under this title in accordance with Chapter 2, Economic Service Areas.

(7) "Employment plan" means a written agreement between the department and a client that describes:

- (a) the relationship between the department and the client;
- (b) the obligations of the department and the client; and
- (c) the result if an obligation is not fulfilled by the department or the client.

(8) "Executive director" means the executive director of the department appointed under Section 35A-1-201.

(9) "Government entity" means the state or any county, municipality, local district, special service district, or other political subdivision or administrative unit of the state, including state institutions of higher education as defined in Section 53B-2-101.

(10) "Public assistance" means:

- (a) services or benefits provided under Chapter 3, Employment Support Act;
- (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;
- (c) foster care maintenance payments provided from the General Fund or under Title IV-E of the Social Security Act;
- (d) SNAP benefits; and
- (e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(11) "SNAP" means the federal "Supplemental Nutrition Assistance Program" under Title 7, U.S.C. Chapter 51, Supplemental Nutrition Assistance Program, formerly

known as the federal Food Stamp Program.

(12) "SNAP benefit" or "SNAP benefits" means a financial benefit, coupon, or privilege available under SNAP.

(13) "Stabilization" means addressing the basic living, family care, and social or psychological needs of the client so that the client may take advantage of training or employment opportunities provided under this title or through other agencies or institutions.

Amended by Chapter 179, 2014 General Session

**35A-1-103. Department of Workforce Services -- Creation -- Seal.**

(1) There is created the Department of Workforce Services, which has all of the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities outlined in this title.

(2) For purposes of this title, the department shall have an official seal that shall be judicially noticed.

Amended by Chapter 375, 1997 General Session

**35A-1-104. Department authority.**

Within all other authority or responsibility granted to it by law, the department may:

(1) adopt rules when authorized by this title, in accordance with the procedures of Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(2) purchase, as authorized or required by law, services that the department is responsible to provide for legally eligible persons;

(3) conduct adjudicative proceedings in accordance with the procedures of Title 63G, Chapter 4, Administrative Procedures Act;

(4) establish eligibility standards for its programs, not inconsistent with state or federal law or regulations;

(5) take necessary steps, including legal action, to recover money or the monetary value of services provided to a recipient who is not eligible;

(6) administer oaths, certify to official acts, issue subpoenas to compel witnesses and the production of books, accounts, documents, and other records necessary as evidence;

(7) acquire, manage, and dispose of any real or personal property needed or owned by the department, not inconsistent with state law;

(8) receive gifts, grants, devises, and donations or their proceeds, crediting the program designated by the donor, and using the gift, grant, devise, or donation for the purposes requested by the donor, as long as the request conforms to state and federal policy;

(9) accept and employ volunteer labor or services;

(10) reimburse volunteers for necessary expenses, when the department considers that reimbursement to be appropriate;

(11) carry out the responsibility assigned by the State Workforce Services Plan developed by the State Council on Workforce Services;

- (12) provide training and educational opportunities for its staff;
- (13) examine and audit the expenditures of any public funds provided to a local authority, agency, or organization that contracts with or receives funds from those authorities or agencies;
- (14) accept and administer grants from the federal government and from other sources, public or private;
- (15) employ and determine the compensation of clerical, legal, technical, investigative, and other employees necessary to carry out its policymaking, regulatory, and enforcement powers, rights, duties, and responsibilities under this title;
- (16) establish and conduct free employment agencies, and bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in this state;
- (17) collect, collate, and publish statistical and other information relating to employees, employers, employments, and places of employment, and other statistics as it considers proper;
- (18) encourage the expansion and use of apprenticeship programs meeting state or federal standards for apprenticeship programs;
- (19) develop processes to ensure that the department responds to the full range of employee and employer clients; and
- (20) carry out the responsibilities assigned to it by statute.

Amended by Chapter 382, 2008 General Session

**35A-1-104.5. Other department duties -- Strategic plan for health system reform -- Reporting suspected misuse of a Social Security number.**

- (1) The department shall work with the Department of Health, the Insurance Department, the Governor's Office of Economic Development, and the Legislature to develop the health system reform in accordance with Title 63M, Chapter 1, Part 25, Health System Reform Act.
- (2) In the process of determining an individual's eligibility for a public benefit or service under this title or under federal law, if the department determines that a valid Social Security number is being used by an unauthorized individual, the department shall:
  - (a) inform the individual who the department determines to be the likely actual owner of the Social Security number or, if the likely actual owner is a minor, the minor's parent or guardian, of the suspected misuse; and
  - (b) subject to federal law, provide information of the suspected misuse to an appropriate law enforcement agency responsible for investigating identity fraud.
- (3) If the department learns or determines that providing information under Subsection (2)(b) is prohibited by federal law, the department shall notify the Legislative Management Committee.

Amended by Chapter 119, 2012 General Session

**35A-1-105. Department budget -- Reports from divisions.**

- (1) The department shall prepare and submit to the governor for inclusion in the

governor's budget to be submitted to the Legislature, a budget of the department's financial requirements needed to carry out its responsibilities as provided by law during the fiscal year following the Legislature's next annual general session.

(2) The executive director shall require a report from each of the divisions and offices of the department, to aid in preparation of the departmental budget.

Enacted by Chapter 240, 1996 General Session

**35A-1-106. Fees.**

(1) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department by following the procedures and requirements of Section 63J-1-504.

(2) The department shall submit each fee established under this section to the Legislature for its approval as part of the department's annual appropriations request.

Amended by Chapter 183, 2009 General Session

**35A-1-108. Participants in work experience or training programs funded by the department -- Status -- Receipt of workers' compensation medical benefits.**

(1) A client or applicant who is directed to participate in a work experience or training program funded by the department is considered to be a volunteer government worker of the department, as provided in Title 67, Chapter 20, Volunteer Government Workers Act, solely for the purpose of receiving workers' compensation medical benefits.

(2) Receipt of medical benefits by a client or applicant under Subsection (1) is the exclusive remedy against the agency and the cooperating employer for all injuries and occupational diseases as provided under Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

Amended by Chapter 54, 2007 General Session

**35A-1-109. Annual report -- Content -- Format.**

(1) The department shall prepare and submit to the governor and the Legislature, by October 1 of each year, an annual written report of the operations, activities, programs, and services of the department, including its divisions, offices, boards, commissions, councils, and committees, for the preceding fiscal year.

(2) For each operation, activity, program, or service provided by the department, the annual report shall include:

(a) a description of the operation, activity, program, or service;

(b) data selected and used by the department to measure progress, performance, and scope of the operation, activity, program, or service, including summary data;

(c) budget data, including the amount and source of funding, expenses, and allocation of full-time employees for the operation, activity, program, or service;

(d) historical data from previous years for comparison with data reported under Subsections (2)(b) and (c);

- (e) goals, challenges, and achievements related to the operation, activity, program, or service;
  - (f) relevant federal and state statutory references and requirements;
  - (g) contact information of officials knowledgeable and responsible for each operation, activity, program, or service; and
  - (h) other information determined by the department that:
    - (i) may be needed, useful, or of historical significance; or
    - (ii) promotes accountability and transparency for each operation, activity, program, or service with the public and elected officials.
- (3) The annual report shall be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature.
- (4) The department shall:
- (a) submit the annual report in accordance with Section 68-3-14; and
  - (b) make the annual report, and previous annual reports, accessible to the public by placing a link to the reports on the department's website.

Enacted by Chapter 371, 2014 General Session

**35A-1-201. Executive director -- Appointment -- Removal -- Compensation -- Qualifications -- Responsibilities -- Deputy directors.**

- (1) (a) The chief administrative officer of the department is the executive director, who is appointed by the governor with the consent of the Senate.
- (b) The executive director serves at the pleasure of the governor.
- (c) The executive director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
- (d) The executive director shall be experienced in administration, management, and coordination of complex organizations.
- (2) The executive director shall:
- (a) administer and supervise the department in compliance with Title 67, Chapter 19, Utah State Personnel Management Act;
  - (b) supervise and coordinate between the economic service areas and directors created under Chapter 2, Economic Service Areas;
  - (c) coordinate policies and program activities conducted through the divisions and economic service areas of the department;
  - (d) approve the proposed budget of each division, the Workforce Appeals Board, and each economic service area within the department;
  - (e) approve all applications for federal grants or assistance in support of any department program; and
  - (f) fulfill such other duties as assigned by the Legislature or as assigned by the governor that are not inconsistent with this title.
- (3) The executive director may appoint deputy or assistant directors to assist the executive director in carrying out the department's responsibilities.
- (4) The executive director shall at least annually provide for the sharing of information between the advisory councils established under this title.

Amended by Chapter 371, 2014 General Session

**35A-1-202. Divisions -- Creation -- Duties -- Workforce Appeals Board, councils, Child Care Advisory Committee, and economic service areas.**

- (1) There is created within the department the following divisions:
  - (a) the Employment Development Division to administer the development and implementation of employment assistance programs that are:
    - (i) related to the operations of the department; and
    - (ii) consistent with federal and state law;
  - (b) to administer those services that are not delivered through the economic service areas:
    - (i) the Workforce Development and Information Division; and
    - (ii) the Unemployment Insurance Division;
  - (c) the Division of Adjudication to adjudicate claims or actions in accordance with this title; and
  - (d) the Housing and Community Development Division, which is described in Sections 35A-8-201 and 35A-8-202.
- (2) In addition to the divisions created under Subsection (1), within the department are the following:
  - (a) the Workforce Appeals Board created in Section 35A-1-205;
  - (b) the State Council on Workforce Services created in Section 35A-1-206;
  - (c) the Employment Advisory Council created in Section 35A-4-502;
  - (d) the Child Care Advisory Committee created in Section 35A-3-205; and
  - (e) the economic service areas created in accordance with Chapter 2, Economic Service Areas.

Amended by Chapter 212, 2012 General Session

**35A-1-203. Executive director -- Jurisdiction over division and economic service area directors -- No jurisdiction over Workforce Appeals Board -- Authority.**

- (1) The executive director has administrative jurisdiction over each division and economic service area.
- (2) To effectuate greater statewide efficiency and local flexibility in the implementation of programs, the executive director shall coordinate with the directors of the divisions and the directors of the economic service areas.
- (3) To effectuate greater efficiency and economy in the operations of the department, the executive director may:
  - (a) make changes in personnel and service functions in the divisions and economic service areas under the executive director's administrative jurisdiction; and
  - (b) authorize designees to perform appropriate responsibilities.
- (4) (a) The executive director has no jurisdiction over the Workforce Appeals Board except as provided in Subsection (4)(b).
  - (b) The executive director shall:
    - (i) approve the budget of the Workforce Appeals Board;
    - (ii) provide the necessary staff support to the Workforce Appeals Board; and

(iii) make rules necessary for the operations of the Workforce Appeals Board and the efficiency of the adjudicative process as a whole in accordance with Section 35A-1-303.

(5) To facilitate management of the department, the executive director may establish offices necessary to implement this title or to perform functions such as budgeting, planning, data processing, and personnel administration.

Amended by Chapter 188, 2011 General Session

**35A-1-204. Division directors -- Appointment -- Compensation -- Qualifications.**

(1) The chief officer of each division within the department shall be a director, who shall serve as the executive and administrative head of the division.

(2) A director shall be appointed by the executive director with the concurrence of the governor and may be removed from that position at the will of the executive director.

(3) A director of a division shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

(4) (a) A director of a division shall be experienced in administration and possess such additional qualifications as determined by the executive director.

(b) In addition to the requirements of Subsection (4)(a), the director of the Division of Adjudication shall be admitted to the practice of law in Utah.

Amended by Chapter 375, 1997 General Session

**35A-1-205. Workforce Appeals Board -- Chair -- Appointment -- Compensation -- Qualifications.**

(1) There is created the Workforce Appeals Board within the department consisting of one or more panels to hear and decide appeals from the decision of an administrative law judge.

(2) (a) A panel shall consist of three impartial members appointed by the governor as follows:

(i) the board chair, appointed in accordance with Subsection (5);

(ii) one member appointed to represent employers; and in making this appointment, the governor shall consider nominations from employer organizations; and

(iii) one member appointed to represent employees; and in making this appointment, the governor shall consider nominations from employee organizations.

(b) No more than two members of a panel may belong to the same political party.

(3) (a) (i) The term of a member shall be six years beginning on March 1 of the year the member is appointed, except as otherwise provided in Subsection (3)(a)(ii).

(ii) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately one third of the members are appointed every two years.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(c) The governor may remove a member for inefficiency, neglect of duty, malfeasance or misfeasance in office, or other good and sufficient cause.

(d) A member shall hold office until a successor is appointed and has qualified.

(4) (a) Except as provided in Subsection (4)(b), a member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(b) The member appointed as board chair in accordance with Subsection (5) shall be compensated at an hourly rate determined by the Department of Human Resource Management in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

(5) (a) The chief officer of the board shall be the chair, who shall serve as the executive and administrative head of the board.

(b) The chair shall be appointed by the governor to represent the public and may be removed from that position at the will of the governor.

(c) The chair shall be experienced in administration and possess any additional qualifications determined by the governor.

(6) (a) The chair shall designate an alternate from a panel appointed under this section:

(i) in the absence of a regular member or the chair; or

(ii) if the regular member or the chair has a conflict of interest.

(b) Each case shall be decided by a full three-member panel.

(7) The department shall provide the Workforce Appeals Board necessary staff support, except, the board may employ, retain, or appoint legal counsel.

Amended by Chapter 286, 2010 General Session

**35A-1-206. State Council on Workforce Services -- Appointment -- Membership -- Terms of members -- Compensation.**

(1) There is created a State Council on Workforce Services that shall:

(a) perform the activities described in Subsection (8);

(b) advise on issues requested by the department and the Legislature; and

(c) make recommendations to the department regarding:

(i) the implementation of Chapters 2, Economic Service Areas, 3, Employment Support Act, and 5, Training and Workforce Improvement Act; and

(ii) the coordination of apprenticeship training.

(2) (a) The council shall consist of the following voting members:

(i) a private sector representative from each economic service area as designated by the economic service area director;

(ii) the superintendent of public instruction or the superintendent's designee;

(iii) the commissioner of higher education or the commissioner's designee; and

(iv) the following members appointed by the governor in consultation with the executive director:



(A) four representatives of small employers as defined by rule by the department;

(B) four representatives of large employers as defined by rule by the department;

(C) four representatives of employees or employee organizations, including at least one representative from nominees suggested by public employees organizations;

(D) two representatives of the clients served under this title including community-based organizations;

(E) a representative of veterans in the state;

(F) the executive director of the Utah State Office of Rehabilitation; and

(G) the Applied Technology College president.

(b) The following shall serve as nonvoting ex officio members of the council:

(i) the executive director or the executive director's designee;

(ii) a legislator appointed by the governor from nominations of the speaker of the House of Representatives and president of the Senate;

(iii) the executive director of the Department of Human Services;

(iv) the director of the Governor's Office of Economic Development or the director's designee; and

(v) the executive director of the Department of Health.

(3) (a) The governor shall appoint one nongovernmental member from the council as the chair of the council.

(b) The chair shall serve at the pleasure of the governor.

(4) (a) A member appointed by the governor shall serve a term of four years and may be reappointed to one additional term.

(b) A member shall continue to serve until the member's successor has been appointed and qualified.

(c) Except as provided in Subsection (4)(d), as terms of council members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(d) Notwithstanding the requirements of Subsection (4)(c), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately one half of the council is appointed every two years.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) A majority of the voting members constitutes a quorum for the transaction of business.

(6) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and

Expenses.

(7) The department shall provide staff and administrative support to the council at the direction of the executive director.

(8) The council shall:

(a) develop a state workforce services plan in accordance with Section 35A-1-207;

(b) review economic service area plans to certify consistency with state policy guidelines;

(c) improve the understanding and visibility of state workforce services efforts through external and internal marketing strategies;

(d) include in the annual written report described in Section 35A-1-109, information and accomplishments related to the activities of the department;

(e) issue other studies, reports, or documents the council considers advisable that are not required under Subsection (8)(d);

(f) coordinate the planning and delivery of workforce development services with public education, higher education, vocational rehabilitation, and human services; and

(g) perform other responsibilities within the scope of workforce services as requested by:

(i) the Legislature;

(ii) the governor; or

(iii) the executive director.

Amended by Chapter 371, 2014 General Session

Amended by Chapter 387, 2014 General Session

**35A-1-207. State workforce services plan -- Economic service area plans.**

(1) The State Council on Workforce Services shall annually develop a state workforce services plan that shall include:

(a) a mechanism for getting consumer and public feedback on department programs in each economic service area;

(b) projected analysis of the workforce needs of employers and clients;

(c) policy standards in programs and process when required by statute or considered necessary by the council that ensure statewide program consistency among economic service areas;

(d) state outcome-based standards for measuring program performance to ensure equitable service to all clients;

(e) state oversight systems to review economic service area compliance with state policies;

(f) elements of economic service area plans that relate to statewide initiatives and programs;

(g) strategies to ensure program responsiveness, universal access, unified case management;

(h) strategies to eliminate unnecessary barriers to access services; and

(i) strategies to provide assistance to employees facing employment dislocation and their employers.

(2) (a) Economic service area directors shall annually develop an economic

service area plan to be followed in administering services.

(b) The plan shall include:

- (i) a projected analysis of the economic service area workforce needs of employers and clients;
- (ii) assurances that state policy standards will be incorporated into the economic service area design;
- (iii) an economic service area budget outlining administration and customer support and services expenditures;
- (iv) the location of employment centers and staff levels to deliver services;
- (v) the services to be provided including assessment and support services, job training options, job placement, and employer outreach;
- (vi) identification of targeted occupations for which training will be approved;
- (vii) economic service area outcome-based performance standards that ensure equitable services to all clients;
- (viii) economic service area oversight processes that include a process to evaluate program effectiveness and develop plans to improve programs;
- (ix) internal and external marketing strategies to improve the understanding and visibility of economic service area efforts;
- (x) coordination of apprenticeship training; and
- (xi) strategies to provide assistance to employees facing employment dislocation and their employers.

Amended by Chapter 188, 2011 General Session

**35A-1-301. Presiding officers for adjudicative proceedings -- Subpoenas -- Independent judgment -- Consolidation -- Record -- Notice of order.**

(1) (a) The executive director shall authorize the Division of Adjudication to call, assign a presiding officer, and conduct hearings and adjudicative proceedings when an application for a proceeding is filed with the Division of Adjudication under this title.

(b) The director of the Division of Adjudication or the director's designee may issue subpoenas. Failure to respond to a properly issued subpoena may result in a contempt citation and offenders may be punished as provided in Section 78B-6-313.

(c) Witnesses subpoenaed under this section are allowed fees as provided by law for witnesses in the district court of the state. The fees shall be paid as follows:

(i) The witness fees shall be paid by the state unless the witness is subpoenaed at the instance of a party other than the department.

(ii) Notwithstanding Subsection (1)(c)(i), if the subpoena is issued under Chapter 4, Employment Security Act, the fees are part of the expense of administering that chapter.

(d) A presiding officer assigned under this section may not participate in any case in which the presiding officer is an interested party. Each decision of a presiding officer shall represent the presiding officer's independent judgment.

(2) In the judgment of the presiding officer having jurisdiction of the proceedings the consolidation would not be prejudicial to any party, when the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding:

- (a) the presiding officer may fix the same time and place for considering each matter;
  - (b) jointly conduct hearings;
  - (c) make a single record of the proceedings; and
  - (d) consider evidence introduced with respect to one proceeding as introduced in the others.
- (3) (a) The director shall keep a full and complete record of all adjudicative proceedings in connection with a disputed matter.
- (b) All testimony at any hearing shall be recorded but need not be transcribed unless the disputed matter is appealed. If a party requests transcription, the transcription shall be provided at the party's expense.
- (c) All records on appeals shall be maintained in the offices of the Division of Adjudication. The records shall include an appeal docket showing the receipt and disposition of the appeals.
- (4) A party in interest shall be given notice of the entry of a presiding officer's order or any order or award of the department. The mailing of the copy of the order or award to the last-known address in the files of the department of a party in interest and to the attorneys or agents of record in the case, if any, is considered to be notice of the order.
- (5) In any formal adjudication proceeding, the presiding officer may take any action permitted under Section 63G-4-206.

Amended by Chapter 3, 2008 General Session  
Amended by Chapter 382, 2008 General Session

**35A-1-302. Review of administrative order -- Finality of Workforce Appeals Board's order.**

- (1) An order entered by an administrative law judge under this title is the final decision of the department unless a further appeal is initiated under this title and in accordance with the rules of the department governing the review.
- (2) The order of the Workforce Appeals Board on review is final, unless set aside by the court of appeals.
- (3) If an order is appealed to the court of appeals after the party appealing the order has exhausted all administrative appeals, the court of appeals has jurisdiction to review, reverse, or annul any order of the Workforce Appeals Board, or to suspend or delay the operation or execution of the order of the Workforce Appeals Board being appealed.

Amended by Chapter 375, 1997 General Session

**35A-1-303. Rulemaking.**

- (1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing adjudicative procedures including the forms of notices and the manner of serving notice in all claims.
- (b) Except as provided in this title and Title 63G, Chapter 4, Administrative Procedures Act, the rules made under this section are not required to conform to

common law or statutory rules of evidence or other technical rules of procedure.

(2) The rules made under this section shall include procedures to dispose of cases informally, or to expedite claims adjudication, narrow issues, and simplify the methods of proof at hearings.

(3) Any rule made concerning proceedings before the Workforce Appeals Board shall be made in consultation with the Workforce Appeals Board.

Amended by Chapter 382, 2008 General Session

**35A-1-304. Review authority of the Workforce Appeals Board.**

(1) (a) In accordance with this title and Title 63A, Chapter 46b, Administrative Procedures Act, the Workforce Appeals Board may allow an appeal from a decision of an administrative law judge if a motion for review is filed with the Division of Adjudication within the designated time by any party entitled to the notice of the administrative law judge's decision.

(b) An appeal filed by the party shall be allowed as of right if the decision of the administrative law judge did not affirm the department's prior decision.

(c) If the Workforce Appeals Board denies an application for appeal from the decision of an administrative law judge, the decision of the administrative law judge is considered a decision of the Workforce Appeals Board for purposes of judicial review and is subject to judicial review if further appeal is initiated under this title.

(2) On appeal, the Workforce Appeals Board may on the basis of the evidence previously submitted in the case, or upon the basis of any additional evidence it requires:

(a) affirm the decision of the administrative law judge;  
(b) modify the decision of the administrative law judge; or  
(c) reverse the findings, conclusions, and decision of the administrative law judge.

(3) The Workforce Appeals Board shall promptly notify the parties to any proceedings before it of its decision, including its findings and conclusions, and the decision is a final order of the department unless within 30 days after the date the decision of the Workforce Appeals Board is issued, further appeal is initiated under this title.

Amended by Chapter 116, 1998 General Session

**35A-1-305. Independence of Workforce Appeals Board.**

A member of the Workforce Appeals Board may not participate in any case in which the member is an interested party. Each decision of a member of the Workforce Appeals Board shall represent the member's independent judgment.

Amended by Chapter 375, 1997 General Session

**35A-1-306. Electronic or similar methods.**

The department may by rule permit hearings or other adjudicative hearings to be conducted, recorded, or published by means of electronic devices or other similar

methods.

Enacted by Chapter 240, 1996 General Session

**35A-1-307. Scope of part.**

This part does not apply to adjudication under:

- (1) Chapter 3, Employment Support Act; or
- (2) Chapter 5, Part 1, Job Training Coordination Act.

Repealed and Re-enacted by Chapter 375, 1997 General Session

**35A-1-501. Legal representation of department.**

At the request of the department, it is the duty of the county attorney or district attorney, as appropriate under Sections 17-18a-202 and 17-18a-203, and the attorney general to represent the department in any legal action taken under this part, Chapter 3, Employment Support Act, or under Title 76, Chapter 8, Part 12, Public Assistance Fraud.

Amended by Chapter 237, 2013 General Session

**35A-1-503. Evidence in legal actions.**

(1) In any civil action pursuant to this part or criminal action pursuant to Title 76, Chapter 8, Part 12, Public Assistance Fraud:

(a) a fund transfer or payment instrument made to the order of a party shall constitute prima facie evidence that such party received cash assistance under Chapter 3, Employment Support Act, from the state;

(b) all of the records in the custody of the department relating to the application for, verification of, issuance of, receipt of, and use of public assistance shall constitute business records within the meaning of the exceptions to the hearsay rule of evidence; and

(c) the value of the benefits received shall be based on the ordinary and usual charge for similar benefits in the private sector.

(2) (a) A conviction or a guilty plea on a misdemeanor or felony charge of public assistance fraud is admissible in a civil action brought under this part.

(b) Subsection (2)(a) may not be construed to limit the right to use a conviction or guilty plea in any manner permitted by law or court rule.

Amended by Chapter 132, 1999 General Session